

Licensing/Gambling Hearing

To: Councillors Aspden, Boyce and Watt

Date: Tuesday, 7 April 2015

Time: 10.00 am

Venue: The Thornton Room - Ground Floor, West Offices (G039)

AGENDA

1. Chair

To elect a Member to act as Chair of the meeting.

2. Introductions

3. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

4. Minutes

To approve and sign the minutes of Licensing Hearing held on 15th January 2015.

5. The Determination of an Application by City of York Council for a Licence Variation Section 35(3)(a) in respect of Footstreet Area of City of York including Exhibition Square. (CYC-010893)

Democracy Officer:

Name: Laura Bootland

Contact Details:

- Telephone – (01904) 552062
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For more information about any of the following, please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats.

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

Distribution:

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

Press, Library.



LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR HEARINGS

Introduction

The procedure outlined below will be followed at all Licensing Hearings.

As Licensing Hearings are quasi-judicial the Sub-Committee will, in effect, act like a Court and the rules of natural justice will apply. The Sub-Committee will be guided by legal principles in determining whether evidence is both relevant and fairly admitted. Committee Members have a duty to view all evidence presented before them impartially. Members of the Licensing Sub-Committee have all received relevant training and are used to making decisions of this type. No matter how strong local opinion may be, Committee Members can only make decisions based on relevant licensing issues as set out before the Sub-Committee in determining applications.

The hearing will be in public session. However, the Sub-Committee may exclude the public from a hearing if it considers it in the public interest to do so. However, the decision will be made in private.

The purpose of the hearing is

- To enable those with a right to appear to advance their point of view and to test the case of their opponents
- To assist the Sub-Committee to gather evidence and understand the relevant issues

In view of the requirement to hold hearings within specified times, the Licensing Authority will generally be unable to enter into discussions to identify dates convenient to all parties concerned. In exceptional circumstances, the Licensing Authority will consider applications to adjourn hearings to a later date.

Representations at Licensing Hearings

The Applicant, Ward Councillors, and Representors who have made written submissions will be allowed to speak at the Sub-Committee. At

any hearing of an application, the Applicant and any Representors shall attend in person wherever possible. Any party to a hearing may be assisted or represented by any person, legally or otherwise.

All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee. A time limit has been set because of the pressures on the Sub-Committees to hear so many applications in a short period of time. **Each party will have 15 minutes to address the Sub-Committee, give any further information, and call any witnesses.** If any party considers this time to be insufficient then a request in writing may be made to the Democracy Officer for an extension of time at least 2 working days before the hearing. However, this will not be automatically granted and will be at the discretion of the Sub-Committee.

The Sub-Committee may take into account any documentary evidence or other information in support of the application, representations or notice, either before the hearing or, with the consent of all other parties, at the hearing.

If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written objection and hear and consider any evidence and argument in relation to it put forward by the Applicant. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by the Applicant and Members.

The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives. Duplication should be avoided. Comments must be confined to those points already made, although the parties may extend or expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be repeated or made at length. The Applicant and Representors cannot raise substantial new information at a hearing which has not been seen previously by the other parties.

A Representor **may not** introduce any new ground or objection not referred to in the written submission. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

Any person behaving in a disruptive manner will be asked to leave the hearing. If this does occur, that person may, before the end of the hearing, submit in writing any information which they would have been entitled to give orally.

Procedure prior to the Hearing

The Members sitting on the Sub-Committee will meet prior to the hearing to note the matters that are to be presented. They will only be accompanied by the Democracy Officer and Legal Advisor (*if present*). Attention will only be drawn to the nature of the application and the premises or person to which it relates. The actual application will not be discussed.

At any hearing of an application, the Licensing Officer, the Applicant and any Representors or representatives will report to reception and be asked to wait in reception until the democracy officer calls them through to the committee room.

Procedure at the Hearing

1. Members of the Sub-Committee will appoint a chair.
2. The Chair introduces the Committee Members and officers [*Democracy Officer, Legal Advisor to the committee (if present) and the Licensing Officer*], welcomes the Applicant and Representors (or their representatives), and establishes the identity of all who will be taking part.
3. The Chair will explain to the parties the procedure that will be followed at the hearing.
4. The Chair will proceed with the order of business on the agenda.
5. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to present the application.
6. The Licensing Officer outlines the application, confirms the application details, introduces the report and gives an update on any recent changes.

7. The Chair will invite Committee Members, the Applicant and Representors (or representatives) to ask the Licensing Officer questions to clarify any points raised in the report.
8. The Chair will ask the Applicant (or their representative) to present their case.
9. The Applicant (or their representative) will present their case and may call any witnesses to support their case [*maximum 15 minutes*].
10. The Chair will invite the Representors (or their representative) in the following order to ask questions of the Applicant (or their representative) and/or witnesses [*maximum 5 minutes each party*]
 - (i) Police
 - (ii) Other Responsible Authorities
 - (iii) Ward Councillors
 - (iv) Interested Parties
11. The Chair will invite the Committee Members to ask questions of the Applicant (or their representative) and/or witnesses.
12. The Chair will invite the Representors (or their representative) in the following order to state the nature of their interest in the matter, present their case and call any witnesses to support their case [*maximum 15 minutes each party*]
 - (i) Police
 - (ii) Other Responsible Authorities
 - (iii) Ward Councillors
 - (iv) Interested Parties
13. The Chair will invite the Applicant to ask questions of each Representor (or their representative) and/or their witnesses after each presentation [*maximum 5 minutes per Representor*].
14. The Chair will invite the Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.

15. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*
 - (i) Police
 - (ii) Other Responsible Authorities
 - (iii) Ward Councillors
 - (iv) Interested Parties
16. The Chair will invite the Applicant (or their representative) to summarise their case *[maximum 5 minutes]*.
17. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor *(if present)* on law and jurisdiction.
18. When all the evidence has been heard, the Chair will declare the hearing closed and ask the Licensing Officer, the Applicant and Representors (or their representatives) plus any witnesses present to leave the committee room and wait in reception while the Sub-Committee considers the evidence.

Procedure after the Hearing

19. If the Sub-Committee wish to seek further clarification on the evidence given, the Democracy Officer will invite all parties back into the committee room.
20. If possible, and for all hearings under:-
 - section 35 or 39 which is in respect of an application made at the same time as an application for conversion of an existing licence under paragraph 2 of Schedule 8 (determination of application under section 34 or 37)
 - section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85)
 - section 105(2)(a) (counter notice following police objection to temporary event notice)
 - section 167(5)(a) (review of premises licence following closure order)

- paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence)
- paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate)
- paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence)

the Sub-Committee will make a decision on conclusion of the hearing and only the Democracy Officer and the Legal Advisor to the Sub-Committee (*if present*) will remain in the room with the Committee Members. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.

21. If the decision has been made, all the parties will be invited back into the committee room by the Democracy Officer. The Chair will announce the decision including reasons together with, if appropriate, details of any conditions to be attached to the grant of the licence. This decision will then be communicated in writing to the Applicant and Representors within 3 working days of the hearing. There can be no further questions or statements.
22. For all other hearings not listed above, if the Sub-Committee is unable to make a decision on the day of the hearing, the decision will be made within 5 working days beginning with the day or the last day on which the hearing was held. The Democracy Officer will inform the parties that they are no longer required and the decision will be communicated in writing to the Applicant and Representors within 3 working days of the decision being made.
23. The notification will include information about the rights of appeal against the determination made.

City of York Council

Committee Minutes

Meeting	Licensing Hearing
Date	15 January 2015
Present	Councillors Aspden, Watt and Wiseman

25. Chair

Resolved: That Councillor Aspden be elected as Chair of the meeting.

26. Introductions

27. Declarations of Interest

At this point in the meeting, Members were asked to declare any personal, prejudicial or pecuniary interests they may have in the business on the agenda. None were declared.

28. Minutes

Resolved: That the minutes of the Licensing Hearings held on 11th August and 15th September 2014 be approved and signed by the Chair as a correct record.

29. The Determination of an Application by Sainsbury's Supermarkets Ltd for a Premises Licence Section 18(3)(a) in respect of Sainsbury's (Former Groves Chapel), Clarence Street/Union Terrace, York, YO31 7EW. (CYC-052345)

Members considered an application by Sainsbury's Supermarkets Ltd for a premises licence in respect of the former Groves Chapel, Clarence Street/Union Terrace York.

In coming to their decision, Members took into consideration all of the evidence and the submissions that were presented to them and determined their relevance to the issues raised and the Licensing objectives. The following were taken into account:

1. The application form.
2. The Licensing Managers report and her comments made at the hearing. She advised that the application was for a premises licence for Sainsbury's at the former Groves Chapel. In respect of comments made by representors at the outset of the hearing in relation to the site notice she advised that she was satisfied that consultation had been carried out correctly in accordance with all statutory requirements. North Yorkshire Police had agreed a number of conditions with the applicant as set out in the agenda papers.
3. The applicants solicitors comments made at the hearing. He advised that the application was for a premises licence at the former Groves Chapel and the applicant was aware of the sensitivity of the application. He reminded those present that at this stage Sainsbury's were not seeking planning permission to open a store, just a licence to sell alcohol should all other aspects such as planning permission for the site be granted in the future. He referred to Sainsbury's rigorous staff training policies, in particular the Challenge 25 policy to ask people who appear to be younger than 25 for identification when purchasing alcohol. He was aware of street drinking problems in the area and felt that the conditions requested by North Yorkshire Police addressed the issue sufficiently. Street drinkers are attracted to the cheapest and highest strength ciders and beers and these will not be sold at the store. In addition the building is currently disused so occupation of the site would discourage street drinkers to congregate on the frontage.
4. The representations made in writing and at the hearing by a number of local residents. They advised that the site is located within a 'no alcohol zone' and there already 5 other off licences in the area. They were concerned that it would be irresponsible to allow another retail outlet for alcohol within a short distance from an alcohol rehabilitation centre. Photographs showing alcohol containers and street drinkers in the area were tabled with agreement of the applicant to highlight the problems of

anti-social behaviour in the area involving alcohol. Concerns were also raised that security arrangements at the store would not be adequate to protect staff and customers should it be allowed go ahead and reference was made to planning issues.

The Sub Committee were presented with the following options:

- Option 1 Grant the licence in the terms applied for.
- Option 2 Grant the licence with modified/additional conditions.
- Option 3 Grant the Licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
- Option 4 Reject the application.

Members chose Option 2 and granted the licence with the modified/additional conditions as agreed by North Yorkshire Police with the applicant as follows:

1. The system clock will be checked regularly for accuracy taking into account of GMT and BST [This condition follows on from the CCTV conditions in the operating schedule].
2. There shall be no sales of single cans of beer, lager or cider from the premises and no sales of single bottles of beer, lager or cider in vessels of less than 500ml.
3. No more than 15% of the sales area to be used at any one time for the sale, exposure for sale or display of alcohol.
4. At least one personal licence holder will be available (this does not necessarily mean present on the premises) at all times that alcohol is on sale.
5. There will be no display of alcohol within 5 metres of the store entrance.
6. Alcohol will be covered by lockable shutters/screens outside the permitted hours for the sale of alcohol.
7. An incident log will be kept at the premises and made available on request to an authorised officer of the City Council or the Police which will record the following:

- All alcohol related crimes reported at the venue.
 - Any alcohol related complaints received regarding crime and disorder
 - Any alcohol related incidents of disorder
 - Any faults in the CCTV system
 - Any refusal of the sale of alcohol
 - Any visit by a relevant authority or emergency service.
8. There will be a minimum of two members of staff present at the premises at all times that alcohol is on sale.
9. The premises DPS is responsible for risk assessing the need for door staff at the venue. Special consideration should be given to the need for door staff on Race days, Fridays and Saturdays or Bank Holidays or other locally or nationally significant events.
10. Signage informing customers of the age verification policy shall be displayed in prominent positions on the shop floor where alcohol is on public display, at the point of sale and at the entrance to the premises.
11. All staff engaged or to be engaged in the sale of alcohol on the premises shall receive the following training in age restricted sales:
- Induction training which must be completed and documented, prior to the sale of alcohol by the staff member.
 - Refresher/reinforcement training at intervals of no more than 6 months.
12. Training records will be available for inspection by a responsible authority on request.
13. Spirits shall not be sold in bottles 35ml or under

Reason for the decision:

The Sub-Committee carefully considered the application and the representations submitted in writing and orally at the hearing by those making representations and the Applicant. In reaching their decision, the Sub-Committee took into consideration the provisions of the Licensing Act 2003, in particular the statutory Licensing Objectives, together with the City of York Council's

Statement of Licensing Policy and the Secretary of State's
Guidance issued under Section 182 of the Licensing Act 2003.

The Sub-Committee noted the local residents' concerns that there has been a problem with street drinkers in the area. They also noted that there had been no objection to the application from the Responsible Authorities and that the Police had agreed a number of proposed conditions with the applicant to address potential issues. The Sub-Committee considered that it had received sufficient assurances from the applicant in order to have a high level of confidence that the premises would be operated responsibly without and that it could, with the imposition of suitable conditions, operate without adding to or causing alcohol related problems in the area. The Sub-Committee considered that the grant of the application with the above mandatory and additional conditions would not undermine the promotion of the licensing objectives.

The Sub-Committee therefore agreed to grant the licence with the additional conditions referred to above which were appropriate and proportionate to promote the licensing objectives. They reminded the applicant of the necessity of complying with all of the conditions and highlighted the possibility of the licence being reviewed if it was found that the licensing objectives were being undermined.

Resolved: That in line with Option 2 the licence be granted.

Reason: To address the issues raised.

Councillor Aspden, Chair

[The meeting started at 10:00am and finished at 12:45pm.]

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Licensing Act 2003 Sub Committee**7 April 2015**

Report of the Director of Communities and Neighbourhoods

Section 35(3) (a) Application for the variation of a premise licence for Footstreet Area of York City Centre including Exhibition Square

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-010893
3. Name of applicant: City of York Council
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is as follows: to extend the terminal hour for all licensable activities to 23:00 hours each and every day.

Background

6. A copy of the existing premise licence is attached at Annex 1. A copy of the plans showing the extent of the area covered by the premises licence is attached at Annex 2.
7. A copy of the application to vary the licence is attached at Annex 3.
8. The following schedule lists the existing and proposed licensable activities and hours;

LICENSABLE ACTIVITIES	CURRENT HOURS	PROPOSED HOURS
Plays	Monday to Sunday 09:00 – 20:00	Monday to Sunday 09:00 – 23:00
Films, Live Music, Recorded Music and Performance of Dance	Monday to Saturday 09:00 – 21:00 Sunday 12:00 – 21:00	Monday to Saturday 09:00 - 23:00 Sunday 12:00 -23:00
Supply of Alcohol	Monday to Sunday 09:00 – 21:00	Monday to Sunday 10:00 – 23:00
Opening Hours	24 Hours	24 hours

Promotion of Licensing Objectives

9. The applicant did not propose any further steps in the application in relation to the promotion of the licensing objectives other than those conditions already attached to the existing premises licence.

Special Policy Consideration

10. Most of the area covered by the premises licence falls within an area that has been identified as one where the concentration of a significant number of licensed premises has a considerable impact on the licensing objectives. As part of a series of measures to address the problems of a city centre increasingly blighted by alcohol misuse, this area has been made the subject of a special policy that addresses the impact of the concentration of licensed premises in this particular part of the city centre. The Special Policy was initially approved for this area by full council on 7th January 2011 and an extension to the policy area was approved by full council on 27 March 2014. A copy of the special Policy Statement is attached at Annex 4.

Consultation

11. Consultation was carried out by the applicant in accordance with s13, and s17 (5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all

responsible authorities. The applicant complied with all statutory requirements.

12. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

13. A representation was received from CYC Licensing Authority in its role as a responsible authority on the grounds the public safety licensing objective could be undermined. This representation was subsequently withdrawn when the applicant agreed to the following condition being attached to the premises licence:

“The York Safety Advisory Group will be presented with the full risk assessment, Public Liability Certification and Safety Certification where the expected attendance is above 499 people and / or significant demountable structures or road closures are proposed no later than 28 days before the event.”

14. A further representation was received from CYC Public Protection (Environmental Protection Unit), on the grounds that the prevention of public nuisance licensing objective, could be undermined if the variation application was granted. However this representation was withdrawn when the applicant agreed to the following conditions being attached to the premises licence if granted:
- i. For the duration of the Yorkshire Fringe Festival, timings shall be 09:00 to 23:00. Otherwise, live and recorded music shall be restricted to Monday to Thursday 09:00 to 21:00; Fridays, Saturdays (and Sundays preceding a bank holiday) 09:00 to 23:00, and Sundays otherwise 12:00 to 21:00.
 - ii. Event organisers as named in the Event Hire Document shall submit a completed copy of the Event Information Questionnaire extracted from the Council’s Code of Practice and Guidance Notes on Control of Noise for Concerts and Outdoor Events, together with a detailed plan showing exact layout of the site and proposed sound monitoring locations, at least 28 days before the event. A copy shall be sent to Public Protection and also the Licensing Unit. The notification shall include a sample of the leaflet to be sent to comply with the condition below and which addresses will receive the leaflet.

- iii. Prior to an event, noise sensitive premises in close proximity shall be leafleted about the event. Information shall include details of the performance times and any sound checks taking place and a contact telephone number of the Named Event Organiser and a CYC representative. In the event of a complaint regarding sound levels, the Named Event Organiser will make an assessment of no less than 5 minutes in close proximity to the complainants address. If the sound level is within category C or D of the sound monitoring log guidance, the specified action shall be taken and the requirements of the Named Event Manager to mitigate be carried out immediately. The Named Event Organiser will contact the complainant and check that they are satisfied with the steps taken. If the complaint cannot be resolved on site the City of York Council Complaints Procedure, as outlined at www.york.gov.uk will be instigated.
- iv. The Events Organiser shall appoint a member of their event team as “Sound Monitor”. The Sound Monitor will undertake a documented sound check prior to or at the start of the event to ensure that the sound levels are within category A or B as defined in “Sound Monitoring Log for Events on CYC land”. During the event, the Sound Monitor shall carry out documented patrols at least once per hour or for each separate act taking place whichever is the more frequent. The monitoring at each location shall be for a representative period whilst the act is taking place (at least 5 minutes) and the observations shall be recorded on the “Sound Monitoring Log Sheet for Events on CYC land”. Actions taken shall be in accordance with those stated on the monitoring log sheet.

Summary of Representations made by other persons

15. Three relevant representations have been received; one from a Ward Councillor and two from residents of York. Details of the representors are attached at Annex 5. A copy of their representations is shown at Annex 6.
16. Members are reminded that representations are only “relevant” if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

Planning Issues

17. There are no planning issues regarding this application.

Options

18. By virtue of s18 (4) of the Act, the Committee have the following options available to them in making their decision:-
19. Option 1: Grant the variation of the licence in the terms applied for.
20. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
21. Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
22. Option 4: Reject the application.
23. Members are reminded that they may only use their discretion to add, remove or amend conditions or activities in relation to matters that are raised by representors and are relevant to the promotion of the licensing objectives.

Analysis

24. The following could be the result of any decision made this Sub Committee:-
25. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
26. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
27. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
28. Option 4: This decision could be appealed at Magistrates Court by the applicant.

Council Plan

29. The Licensing Act 2003 has 4 objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.

30. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

Implications

31.

- **Financial** - N/A
- **Human Resources (HR)** – N/A
- **Equalities** – N/A
- **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the representors.
- **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

Risk Management

32. All Members of the Licensing Act 2003 Committee have received full training on the Act and the regulations governing hearings. They are aware that any decision made which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
33. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

Recommendations

34. That Members determine the application.

Reason: To address the representations received as required by the Licensing Act 2003.

Contact Details

Author:

Lesley Cooke
Licensing Manager

Tel no: 01904 551515

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director– Housing & Public Protection.

Report
Approved



Date 25/03/15

Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services Ext: 1004

Wards Affected: Guildhall East

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of existing premises licence
- Annex 2** - Copy of plans showing licensed area
- Annex 3** - Copy of application form
- Annex 4** - Copy of CYC Special Policy Statement
- Annex 5** - List of representors
- Annex 6** - Copies of representations
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations

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